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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA
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15 HENDERSON APARTMENT VENTURE, LLC,) 2:09-cv-01849-HDM-PAL
16 Plaintiff,)
17 vs.) ORDER
18 ANDREW S. MILLER,)
19 Defendant.)
20 _____)

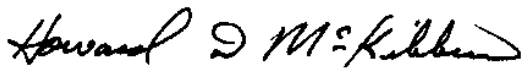
21 On July 23, 2010, defendant filed an emergency motion to
22 compel production of documents and for leave to supplement
23 dispositive motion (#30). On August 2, 2010, the parties filed
24 cross motions for summary judgment (#31 and #32). On August 24,
25 2010, the magistrate judge held a hearing on the emergency motion
26 to compel. The magistrate judge made certain orders during the
27 hearing and then continued it to September 10, 2010. On September
28 1, 2010, the defendant filed a motion to clarify the magistrate

1 judge's order of August 24, 2010. At the September 10, 2010,
2 hearing, the magistrate judge heard the argument of counsel and
3 then advised that she would issue a separate written order to
4 resolve the dispute. As of this date, the discovery dispute
5 remains outstanding.

6 It would be error for the court to grant either party's motion
7 for summary judgment "without first having determined the merits of
8 [the] pending discovery motion." *Garrett v. City & County of San*
9 *Francisco*, 818 F.2d 1515, 1519 (9th Cir. 1987). As the motion for
10 discovery (#30) has not yet been decided, the court cannot at this
11 time rule on the motions for summary judgment because the
12 magistrate judge's ruling may impact the arguments made for summary
13 judgment. Accordingly, both motions for summary judgment (#31 and
14 #32) are denied without prejudice, to renew within 30 days after
15 the magistrate judge issues her order resolving the dispute. The
16 hearing scheduled for March 8, 2011, is therefore vacated.

17 **IT IS SO ORDERED.**

18 DATED: This 4th day of February, 2011.

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21 UNITED STATES DISTRICT JUDGE
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